

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Pinsky v. Duncan

Pinsky v. Duncan, 898 F.2d 852 (2d Cir. 1990) · Decided March 9, 1990

SUMMARY

The Second Circuit held that Connecticut's prejudgment attachment statute, Conn. Gen. Stat. § 52-278e(a)(1), violated due process because it permitted ex parte attachment of real property without prior notice or hearing absent extraordinary circumstances, and because it failed to require the plaintiff to post a bond or other security. The court found that a nonpossessory attachment of real estate deprives the owner of a significant property interest, and that the risk of wrongful attachment was high given the fact-intensive nature of the underlying claims. The lack of exigent circumstances and the absence of a bond requirement rendered the statute unconstitutional on its face.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	George C. Pratt
JURISDICTION	Federal
DECIDED	March 9, 1990
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from summary judgment in favor of defendant-appellee in federal action challenging constitutionality of state statute.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	Published
PARTIES	Brian K. Doehr v. John F. Di Giovanni

TOPICS

- civil procedure
- constitutional law
- appellate procedure
- summary judgment

PRACTICE AREAS

- Civil Procedure

QUESTIONS PRESENTED

1. Whether Conn. Gen. Stat. § 52-278e(a)(1) violates due process by permitting ex parte prejudgment attachment of real estate without prior notice and opportunity for a hearing in the absence of exigent circumstances.
2. Whether the statute violates due process by failing to require the plaintiff to post a bond or other security before obtaining the attachment.

HOLDINGS

1. Yes, the statute violates due process because it allows the issuance of ex parte attachments in the absence of extraordinary circumstances, which is required by the Due Process Clause as interpreted in *Sniadach* and its progeny.
2. Yes, the lack of a bond or security provision is a constitutional defect. The state's vexatious litigation statute does not provide adequate protection because it requires separate litigation and may be unavailable if the underlying action settles.

KEY QUOTATIONS

“The Fourteenth Amendment draws no bright lines around three-day, 10-day, or 50-day deprivations of property.” (854)

“Because the risk of a wrongful attachment is considerable under these circumstances, we conclude that dispensing with notice and opportunity for a hearing until after the attachment, without a showing of extraordinary circumstances, violates the requirements of due process.” (856)

“A constitutionally valid statute must afford such protection, by bond or otherwise.” (857)

FACTUAL BACKGROUND

Di Giovanni sued Doebr for assault and battery in Connecticut state court. At the inception of the lawsuit, before any process was served on Doebr, Di Giovanni applied for and obtained an ex parte attachment on Doebr's home to the value of \$75,000. The attachment was issued based on Di Giovanni's affidavit stating that Doebr willfully and maliciously assaulted him, causing injuries. The affidavit was submitted without notice to Doebr, without a hearing, and without any bond or security. Doebr then filed a federal action challenging the constitutionality of the statute authorizing the attachment.

PROCEDURAL HISTORY

Di Giovanni sued Doebr in Connecticut state court for assault and battery and obtained an ex parte attachment on Doebr's home. Rather than moving to dissolve the attachment, Doebr filed a federal action alleging that the Connecticut attachment statute violated due process. The district court granted summary judgment for Di Giovanni, holding the statute constitutional. Doebr appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded for entry of judgment in favor of DoeHR declaring Conn. Gen. Stat. § 52-278e(a)(l) unconstitutional.

CASES CITED

- Spielman-Fond, Inc. v. Hanson's, Inc., 379 F.Supp. 997 (D.Ariz. 1973), aff'd mem., 417 U.S. 901 (1974)
- Tulley v. Griffin, Inc., 429 U.S. 68 (1976)
- Fuentes v. Shevin, 407 U.S. 67 (1972)
- Shaumyan v. O'Neill, 716 F.Supp. 65 (D.Conn. 1989)
- MPI v. McCullough, 463 F.Supp. 887 (N.D.Miss. 1978)
- Terranova v. AVCO Financial Servs., 396 F.Supp. 1402 (D.Vt. 1975)
- Hutchison v. Bank of N.C., 392 F.Supp. 888 (M.D.N.C. 1975)
- Bay State Harness Horse Racing & Breeding Assn. v. PPG Indus., Inc., 365 F.Supp. 1299 (D.Mass. 1973)
- Gunter v. Merchants Warren Nat'l Bank, 360 F.Supp. 1085 (D.Me. 1973)
- Clement v. Four N. State St. Corp., 360 F.Supp. 933 (D.N.H. 1973)
- Boddie v. Connecticut, 401 U.S. 371 (1971)
- United States v. Premises & Real Property at 4492 S. Livonia Rd., 889 F.2d 1258 (2d Cir. 1989)
- Sniadach v. Family Finance Corp., 395 U.S. 337 (1969)
- Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974)
- North Georgia Finishing, Inc. v. Di-Chem, 419 U.S. 601 (1975)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- Goldberg v. Kelly, 397 U.S. 254 (1970)
- Watertown Equip. Co. v. Norwest Bank Watertown, 830 F.2d 1487 (8th Cir. 1987)
- Jones v. Preuit & Mauldin, 822 F.2d 998 (11th Cir. 1987)
- United States v. Vertol H21C, Reg. No. N8540, 545 F.2d 648 (9th Cir. 1976)
- Jonnet v. Dollar Savings Bank of City of New York, 530 F.2d 1123 (3d Cir. 1976)
- Fermont Div., Dynamics Corp. of America v. Smith, 178 Conn. 393, 423 A.2d 80 (1979)
- Blake v. Levy, 191 Conn. 257, 464 A.2d 52 (1983)
- Hiers v. Cohen, 31 Conn. Supp. 305, 329 A.2d 609 (Super.Ct. Hartford Co. 1973)
- Merrill v. Town of Addison, 763 F.2d 80 (2d Cir. 1985)

CITED IN

- Pinsky v. Duncan, Pinsky v. Duncan, 898 F.2d 852 (2d Cir. 1990)